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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,188	04/06/2004	Jean-Marc Francois	2002B098/2	2316

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EXAMINER

KRUER, KEVIN R

ART UNIT PAPER NUMBER

1773

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/822,188

Applicant(s)

FRANCOIS, JEAN-MARC

Examiner

Kevin R. Kruer

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1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-29,31-48 and 50-60 is/are pending in the application.
- 4a) Of the above claim(s) 27-29 and 31-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-26, 48 and 50-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 6, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 18, 2006 has been entered.

### ***Election/Restrictions***

2. Claim 27-29 and 31-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 15, 2005.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 3-14, 16-26, 48 and 50-60 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,013,353 (Touhsaent) for reasons of record.

Touhsaent teaches a metallized multi-layer film comprising a substrate having a polymer core, on at least one surface of which is a polymer skin layer having a lower melting point than that of the core layer (abstract). The core may comprise a polyolefin such as HDPE or polypropylene (col 2, lines 29+) and is herein understood to read on

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the claimed first polymer layer. Said polymer should have a melting point of 125-190C (col 2, lines 29+). The skin may comprise a polyolefin (col 3, lines 10+) and the skin layer between the core layer and the metallized layer is herein understood to read on the second polymer layer. The skin layers may be co-extruded with the core layer (col 3, lines 40+). The exposed surface of the skin layer may be treated by flame or corona discharge treatment prior to coating to increase its adherence to other materials (abstract). A metal is deposited on the film substrate. Said metal may be aluminum (abstract). A polymeric low temperature sealable coating comprising an ethylene/ethylenically unsaturated carboxylic acid copolymer is deposited on the metal layer (abstract). Said ethylenically unsaturated acid may be acrylic acid, acrylate, methacrylate, or methacrylic acid (col 4, lines 31+). Said low temperature sealable coating is herein understood to read on the claimed transfer layer, and the heat sealable layer of claim 3. Furthermore, said coating is understood to have a "greater affinity for the metal layer than it does for the polymeric first layer" because it is compositionally identical to the claimed coating. The laminate may further comprise a primer comprising titanates, or polyethylene imine to the surface of the core layer opposite the metal layer (col 5, lines 53+). Said laminate may be used to label or package an article (abstract).

The polymer skin layer on the side of the core layer opposite the metal layer may have another coating deposited on the surface thereof (abstract). Said layer may comprise a sealable coat (col 6, lines 5+), a barrier coat such as PVDC (col 6, lines

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34+), or a print layer (col 7, lines 1+). Said sealable layer may comprise the same polymer as the low temperature sealable coating described above.

With regard to the newly claimed limitations of the independent claims, Touhsaent does not teach the "transfer layer" was formed on the second side of the first layer with the de-bonded surface of the transfer layer removably bonded on the second side of the first layer, and the transfer layer was thereafter transferred to and fixedly engaged on the first side of the metal layer following winding the film on a roll after the metal layer is applied on the second layer. However, the courts have held that the method of making the product does not patentably distinguish a claimed product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made.

With regard to claim 9, the skin layer remote from the metal layer is understood to read on the first layer and the core layer and other skin layer are understood to read on the claimed "multiple layer" second polymeric layer.

With regard to claim 19, the skin layer opposite the metal layer is understood to read on the claimed "at least one additional polymeric layer" and is understood to be heat sealable since it is taught to have melting point at least 5-50C lower than the core layer composition (col 3, lines 10+).

***Claim Rejections - 35 USC § 103***

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,013,353 (Touhsaent), as applied to claims 1-14, 16-26, and 48-60, and further in view of Akao et al (US 5,492,741) for reasons of record.

Touhsaent is relied upon as above. Specifically, Touhsaent teaches the metal layer provides the laminate with barrier properties (col 1, lines 1+) but does not teach the claimed thickness of the metal layer. However, Akao teaches the barrier properties of an metallized layer are a result effective variable that depends upon the thickness of the metal layer (col 6, lines 41+). Suitable thicknesses include 55-1200A. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the thickness of the metal layer taught in Touhsaent. The motivation for doing so would have been to optimize the film's barrier properties.

***Response to Arguments***

Applicant's arguments filed July 18, 2006 have been fully considered but they are not persuasive.

Applicant argues the claimed manner in which the laminate was made does not constitute "method limitations," but reflects that the use of the transfer of a coating layer onto a metal layer has the advantage that the metal layer is better protected from

oxidation and also better protected from scratches that may be incurred during subsequent processing. Said arguments are noted but are not found to be persuasive because the polymeric low temperature sealable coating comprising an ethylene/ethylenically unsaturated carboxylic acid copolymer taught in the prior art is understood to inherently perform both of said functions. Thus, the examiner respectfully disagrees with applicant's assertion that the laminate of the prior art differs from the claimed film in structure, composition, and properties.

The examiner notes the presently claimed laminate may comprise a pre-transfer coating, but said coating is presently optional. Thus, the prior art laminate reads on the claimed laminate wherein said coating is not present.

The examiner notes that Applicant has not shown the limitation "debonded surface" structurally distinguishes the claimed laminate from the prior art. Furthermore, the specification fails to teach said "debonded surface" limitation structurally distinguishes the claimed invention from the prior art. Therefore, the rejection is maintained.

Applicant argues claim 15 is allowable because Akao does not cure the deficiencies of Touhsaent. Said argument is not persuasive for the reasons noted above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'K-RK'.

Kevin R. Kruer  
Patent Examiner-Art Unit 1773